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In The

Supreme Court of the United States

October Term 1962

No. 893

JOSEPH NAVARRO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit

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To the United States Court of Appeals for the Eighth Circuit

To The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Joseph Navarro, prays that the Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above-entitled case on March 14, 1962.

OPINION BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reproduced as Appendix A hereto.

QUESTION PRESENTED

1. Whether a misrepresentation by Counsel of accused own choosing, prior to entering of Plea of Guilty, is such a fraud in the inducement of Plea as to require Court to permit withdrawal of Plea.

STATEMENT OF CASE

Petitioner, Joseph Navarro, a resident of Boston, Massachusetts, was arrested at Des Moines, Iowa, on the 17th day of August, 1960. Petitioner's attorney from Boston, Massachusetts, Joseph Sax, was employed by Petitioner to represent him in the United States District Court for the Southern District of Iowa, where he was charged by a two-count information on the 23rd day of August, 1960, charging in both counts, that petitioner on the 17th day of August, 1960, forged and cashed U. S. Postal Money Orders in violation of Section 500, title 18, U. S. Code. Joseph Sax, engaged local counsel in the person of Joseph Marks, to also represent petitioner.

Petitioner, on advise of Counsel, entered a plea of guilty to both counts of the Information on the 23rd day of August, 1960, and was thereafter sentenced on the 2nd day of September, 1960, to five years imprisonment on each of two counts, said sentences to run concurrently.

Petitioner, Joseph Navarro, immediately moved for a mistrial and asked permission to withdraw his plea of guilty, stating that notwithstanding the fact that he had been properly advised by the Court and attorney Joseph Marks, that he had been advised by his attorney of his own choice, that he would not in all probability receive more than eighteen months.

The trial court overruled petitioner's motion for mistrial and request to withdraw plea, and thereafter Petitioner appealed to the Circuit Court of Appeals for the Eighth Circuit. The appeal was argued and submitted on the 1st day of May, 1961, and on the 14th day of March, 1962, dismissed as "frivolous."

REASONS FOR THE ALLOWANCE OF THE WRIT

I.

Petitioner contends that he had a right to rely on the representation of the attorney of his own choice, and since said statements were untrue, that is constituted a "Fraud" which induced his plea of guilty. Petitioner claims that this is a denial of his constitutional guarantees under the 5th and 6th Amendments to the Constitution of the United States and contrary to the law as laid down in the case of *John Machibroda, Petitioner, vs. United States*, decided by the Supreme Court on February 19, 1962: *Glasser vs. United States*, 315 U. S. 60; and *Bergen vs. United States*, 145 Fed. 2d 181.

PRAYER

Wherefore, your Petitioner respectfully prays that a Writ of Certiorari be issued to the United States Court of Appeals for the Eighth Circuit to the end that this cause may be reviewed and determined by this Court, that the judgment of the Circuit Court of Appeals be reversed, and this case be remanded to the District Court for trial.

Respectfully submitted.

DOYLE VERNON LAWYER,
427 Fleming Building,
Des Moines 9, Iowa,
Attorney for Petitioner.

OF COUNSEL:
LAWYER, LAWYER & RAY.

CERTIFICATE

I, James Lawyer, a member of the law firm of Lawyer, Lawyer & Ray, certify that I mailed on the 9th day of April, 1962, a copy of the foregoing Petition for a Writ of Certiorari to the Solicitor General, Department of Justice, Washington 25, D. C., and Don Wine, United States Attorney, U. S. Court House, Des Moines, Iowa, by depositing a copy in the United States mails, postage prepaid to the above addressees.

JAMES LAWYER

APPENDIX

A1

(Opinion)

United States Court of Appeals for the Eighth Circuit

No. 16610

JOSEPH NAVARRO,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Appeal from the United States District Court for the Southern District of Iowa.

This appeal was submitted to the Court on May 1, 1961, on the original files of pleadings and transcript of testimony, together with briefs of appellant and appellee, and oral argument of Counsel.

The appeal being wholly without any substance, it is today dismissed as frivolous.

March 14, 1962

FOR THE COURT.

Clerk, U. S. Court of Appeals, 8th Circuit.

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 893

JOSEPH NAVARRO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The judgment of the court of appeals dismissing petitioner's appeal as frivolous was entered on March 14, 1962. The petition for a writ of certiorari was lodged on April 16, 1962, and docketed on April 20, 1962 when the docket fee was paid. The petition, which seeks review of a judgment in a criminal case, is out of time under Rule 22(2) of the Rules of this Court. In any event, the question raised by petitioner presents no issue which would warrant review by this Court.

Petitioner was sentenced to five years' imprisonment in the United States District Court for the Southern District of Iowa on a plea of guilty to a two-count information charging that he, with intent to defraud, had uttered a forged postal money order knowing the indorsements thereon to be false and forged in violation of 18 U.S.C. 500. He was represented by two attorneys of his own selection. On September 2, 1960, immediately after sentence was imposed, petitioner orally moved to withdraw his guilty plea on the ground that the length of the sentence was greater than the punishment one of his attorneys had told him he would probably receive (Tr. 28-29); according to petitioner, the attorney had said that upon a plea of guilty he "would not in all probability" (Tr. 28) receive more than an eighteen-month sentence. Petitioner conceded below, as he concedes in this Court by implication (Pet. 3), that his other attorney advised him that he might receive a maximum sentence (Tr. 30-31). The record also discloses that at his arraignment on August 23, 1960, prior to the waiver of indictment and shortly before his guilty plea, petitioner denied that his counsel or anyone else had made any promises concerning the court's possible actions in the case (Tr. 4-8).

Petitioner's contention that the sentencing court abused its discretion in refusing to permit petitioner to withdraw his guilty plea was properly found to be frivolous. The "advice" of one of his two attorneys, by petitioner's own statement of it, was merely a conjecture as to the judge's action, a conjecture not concurred in by his other counsel. Disappointment

in the sentence actually imposed affords no adequate basis for relief from a plea of guilty. *Friedman* v. *United States*, 200 F. 2d 690 (C.A. 8), certiorari denied, 345 U.S. 926; *Ridgeway* v. *United States*, 205 F. 2d 680 (C.A. 6). Cf. *Sullivan* v. *United States*, 348 U.S. 170, 174-175.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
SIDNEY M. GLAZER,
Attorneys.

MAY 1962

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